

TO: <b>Mail Stop 8</b> <b>Director of the U.S. Patent and Trademark</b> <b>Office</b> <b>P.O. Box 1450</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been

filed in the U.S. District Court, Central District of California on the following ☐ Patents or ☒ Trademarks:

DOCKET NO. 1118 SGL JCR		DATE FILED	U.S. DISTRICT COURT Central District of California	BY CLERK U.S. DISTRICT COURT CENTRAL DIST. OF CALIF. LOS ANGELES	<b>FILED</b> 2007 AUG 31 PM 5:17
PLAINTIFF MAG INSTRUMENT, INC.		DEFENDANTS NORTHERN SAFETY CO., INC. and DO			
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK			
1	2/18/03	Mag Instrument, Inc.			
2 D530,439					
3					
4					
5					

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading			
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK		
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGMENT

(See Attached)

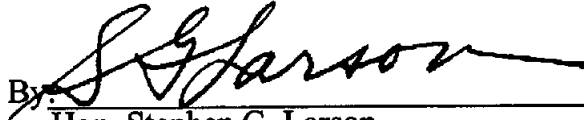
CLERK Sherri R. Carter	(BY) DEPUTY CLERK M. Mead	DATE 5-28-08
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Copy 1—Upon initiation of action, mail this copy to Director    Copy 3— Upon termination of action, mail this copy to Director  
 Copy 2—Upon filing document adding patent(s), mail this copy to Director    Copy 4— Case file copy

1 35. The parties shall bear their own attorneys' fees and costs.  
2

3 **IT IS SO ORDERED:**  
4

5 Dated: \_\_\_ May 23, 2008

6  
7 By:   
8 Hon. Stephen G. Larson  
9 United States District Court Judge

10 Approved as to form and content:  
11

12 Dated: \_\_\_\_\_, 2008 JONES DAY  
13

14 By: \_\_\_\_\_  
15 Charles A. Kertell

16 Attorneys for Plaintiff  
17 MAG INSTRUMENT, INC.

18 Dated: \_\_\_\_\_, 2008 ROTHWELL, FIGG, ERNST & MANBECK, P.C.  
19

20 By: \_\_\_\_\_  
21 Anne M. Sterba

22 Attorneys for Defendant  
23 NORTHERN SAFETY COMPANY, INC.  
24  
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12 NORTHERN SAFETY COMPANY, INC.

13  
14 UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA  
16

17 MAG INSTRUMENT, INC.,

18 Plaintiff,

19 v.

20 NORTHERN SAFETY COMPANY,  
INC.,

21 Defendant.  
22

Case No. CV 07-1118 SGL (JCRx)

**CONSENT JUDGMENT AND  
PERMANENT INJUNCTION**

Hon. Stephen G. Larson

ENTERED JS-6

1 WHEREAS, plaintiff Mag Instrument, Inc. ("Mag Instrument") and  
2 defendant Northern Safety Company, Inc. ("Northern Safety") have agreed in a  
3 separate agreement to settlement of the matters in issue between them and to entry  
4 of this Consent Judgment and Permanent Injunction, it is hereby ORDERED,  
5 ADJUDGED, AND DECREED THAT:

6 1. This is an action for: (1) patent infringement under the patent laws of  
7 the United States, 35 U.S.C. §271, et seq.; (2) federal trademark infringement,  
8 federal false designation of origin, and federal trademark dilution under the  
9 Trademark (Lanham) Act of 1946, as amended, 15 U.S.C. §1051, et seq.; (3)  
10 trademark infringement under California Civil Code §3294; (4) statutory unfair  
11 competition under California Business and Professions Code §17200, et seq.; (5)  
12 trademark dilution under California Business and Professions Code §14247; (6)  
13 common law trademark infringement; and (7) common law unfair competition.

14 2. This Court has jurisdiction over all of the parties in this action and  
15 over the subject matter in issue based on 28 U.S.C. §§1331, 1338(a), 1338(b), and  
16 1367(a), as well as 15 U.S.C. §1121(a). This Court further has continuing  
17 jurisdiction to enforce the terms and provisions of this Consent Judgment and  
18 Permanent Injunction. Venue is also proper in this Court pursuant to 28 U.S.C.  
19 §§1391(b) and 1391(c), as well as 28 U.S.C. §1400(b).

20 3. Mag Instrument is a corporation incorporated under the laws of the  
21 State of California and has its principal place of business at 2001 South Hellman  
22 Avenue, Ontario, California 91761.

23 4. Northern Safety is a corporation incorporated under the laws of the  
24 State of New York and has its principal place of business at 232 Industrial Park  
25 Drive, Frankfort, New York 13340.

26 5. Northern Safety has manufactured, used, imported, offered for sale,  
27 and/or sold, commercially in interstate commerce, the following: (1) an "AAA Mini  
28 Keychain" flashlight; (2) an "AA Mini" flashlight; (3) a "2C-Cell" flashlight; (4) a

1 "2 D-Cell" flashlight;" (5) a "3 D-Cell" flashlight; and (6) a "4 D-Cell" flashlight  
2 (collectively the "Northern Safety" flashlights). Relevant pages from Northern  
3 Safety's 2007 Master Catalog, illustrating these flashlights, are attached hereto as  
4 **Exhibit 1**. The Northern Safety flashlights were neither manufactured nor  
5 authorized by Mag Instrument.

6 6. Mag Instrument is the owner of all right, title, and interest in United  
7 States Design Patent No. D530,439 ("the '439 patent"). A copy of the '439 patent is  
8 attached hereto as **Exhibit 2**.

9 7. The '439 patent, issued on October 17, 2006, is valid and enforceable.

10 8. Northern Safety has infringed the '439 patent by its manufacture, use,  
11 importation, offer for sale, and/or sale of its "AA Mini" flashlight.

12 9. Northern Safety will not directly or indirectly aid, assign, or participate  
13 in any action contesting the validity and/or enforceability of the '439 patent.

14 10. For many years, and prior to the acts of Northern Safety discussed  
15 herein, Mag Instrument has continuously manufactured, advertised, assembled,  
16 marketed, sold, and distributed, in interstate commerce, lines of flashlights,  
17 including, but not limited to, flashlights under the distinctive trademarks MAG-  
18 LITE® and MINI MAGLITE®. These flashlights are also characterized by their  
19 distinctive shapes, styles, and overall appearances ("SSOA"), which are registered  
20 trademarks of Mag Instrument. Digital photographs of a D-Cell MAG-LITE®  
21 flashlight, a C-Cell MAG-LITE® flashlight, and a MINI MAGLITE® flashlight are  
22 attached hereto as **Exhibits 3-5**, respectively.

23 11. The SSOA of the D-Cell MAG-LITE® flashlight, the SSOA of the C-  
24 Cell MAG-LITE® flashlight, and the SSOA of the MINI MAGLITE® flashlight are  
25 non-functional and have acquired secondary meaning in that they have come to be  
26 associated by the trade and consuming public exclusively with Mag Instrument and,  
27 as a result, has come to signify Mag Instrument as the source of flashlights bearing  
28 the same or similar characteristics.

1           12.   Mag Instrument has obtained, and is the owner of, a federal  
2 registration on the SSOA of the D-Cell MAG-LITE® flashlight (the "D-Cell SSOA  
3 Trademark"), which is valid and enforceable throughout the United States. A copy  
4 of the D-Cell SSOA Trademark (United States Trademark Registration No.  
5 2,687,693) is attached hereto as **Exhibit 6**. This registration remains in full force  
6 and effect and is incontestable.

7           13.   The Northern Safety 2 D-Cell, 3 D-Cell, and 4 D-Cell flashlights have  
8 a shape, style, and overall appearance that is the same as, or confusingly similar to,  
9 the D-Cell SSOA Trademark.

10          14.   Northern Safety's manufacture, use, marketing, distribution,  
11 advertising, promotion, importation, offering for sale, and/or sale of the Northern  
12 Safety 2 D-Cell, 3 D-Cell, and 4 D-Cell flashlights is likely to cause, and has  
13 caused, confusion, mistake, and deception among the consuming public in that their  
14 shape, style, and overall appearance colorably imitates Mag Instrument's D-Cell  
15 SSOA Trademark.

16          15.   Northern Safety's use of the D-Cell SSOA Trademark constitutes  
17 trademark infringement of Mag Instrument's federally registered D-Cell SSOA  
18 Trademark in violation of the Lanham Act, 15 U.S.C. §1051, et seq., to the  
19 substantial and irreparable injury of the public and of Mag Instrument's business  
20 reputation and goodwill.

21          16.   The D-Cell SSOA Trademark is a distinctive and famous mark.

22          17.   Northern Safety began manufacturing, using, marketing, distributing,  
23 advertising, promoting, importing, offering for sale, and/or selling the Northern  
24 Safety 2 D-Cell, 3 D-Cell, and 4 D-Cell flashlights subsequent to Mag Instrument's  
25 D-Cell SSOA Trademark becoming distinctive and famous.

26          18.   Northern Safety's commercial use in commerce of the D-Cell SSOA  
27 Trademark in connection with flashlights has caused the dilution of the distinctive  
28 quality of the D-Cell SSOA Trademark in violation of 15 U.S.C. §1125(c).

1           19. Mag Instrument has obtained, and is the owner of, a federal  
2 registration on the SSOA of the C-Cell MAG-LITE® flashlight (the "C-Cell SSOA  
3 Trademark"), which is valid and enforceable throughout the United States. A copy  
4 of the C-Cell SSOA Trademark (United States Trademark Registration No.  
5 2,745,460) is attached hereto as **Exhibit 7**. This registration remains in full force  
6 and effect.

7           20. The Northern Safety 2 C-Cell flashlight has a shape, style, and overall  
8 appearance that is the same as, or confusingly similar to, the C-Cell SSOA  
9 Trademark.

10           21. Northern Safety's manufacture, use, marketing, distribution,  
11 advertising, promotion, importation, offering for sale, and/or sale of the Northern  
12 Safety 2 C-Cell flashlight is likely to cause, and has caused, confusion, mistake,  
13 and deception among the consuming public in that its shape, style, and overall  
14 appearance colorably imitates Mag Instrument's C-Cell SSOA Trademark.

15           22. Northern Safety's use of the C-Cell SSOA Trademark constitutes  
16 trademark infringement of Mag Instrument's federally registered D-Cell SSOA  
17 Trademark in violation of the Lanham Act, 15 U.S.C. §1051, et seq., to the  
18 substantial and irreparable injury of the public and of Mag Instrument's business  
19 reputation and goodwill.

20           23. The C-Cell SSOA Trademark is a distinctive and famous mark.

21           24. Northern Safety began manufacturing, using, marketing, distributing,  
22 advertising, promoting, importing, offering for sale, and/or selling the Northern  
23 Safety 2 C-Cell flashlight subsequent to Mag Instrument's C-Cell SSOA Trademark  
24 becoming distinctive and famous.

25           25. Northern Safety's commercial use in commerce of the C-Cell SSOA  
26 Trademark in connection with flashlights has caused the dilution of the distinctive  
27 quality of the C-Cell SSOA Trademark in violation of 15 U.S.C. §1125(c).  
28

1           26.   Mag Instrument has obtained, and is the owner of, a federal  
2 registration on the SSOA of the MINI MAGLITE® flashlight (the "MINI  
3 MAGLITE® flashlight SSOA Trademark"), which is valid and enforceable  
4 throughout the United States. A copy of the MINI MAGLITE® flashlight SSOA  
5 Trademark (United States Trademark Registration No. 2,074,795) is attached hereto  
6 as **Exhibit 8**. This registrations remains in full force and effect and is  
7 incontestable.

8           27.   The Northern Safety AA Mini and AAA Mini Keychain flashlights  
9 have a shape, style, and overall appearance that is the same as, or confusingly  
10 similar to, the MINI MAGLITE® flashlight SSOA Trademark.

11           28.   Northern Safety's manufacture, use, marketing, distribution,  
12 advertising, promotion, importation, offering for sale, and/or sale of the Northern  
13 Safety AA Mini and AAA Mini Keychain flashlights is likely to cause, and has  
14 caused, confusion, mistake, and deception among the consuming public in that their  
15 shape, style, and overall appearance colorably imitates Mag Instrument's MINI  
16 MAGLITE® flashlight SSOA Trademark.

17           29.   Northern Safety's use of the MINI MAGLITE® flashlight SSOA  
18 Trademark constitutes trademark infringement of Mag Instrument's federally  
19 registered MINI MAGLITE® flashlight SSOA Trademark in violation of the  
20 Lanham Act, 15 U.S.C. §1051, et seq., to the substantial and irreparable injury of  
21 the public and of Mag Instrument's business reputation and goodwill.

22           30.   The MINI MAGLITE® flashlight SSOA Trademark is a distinctive and  
23 famous mark.

24           31.   Northern Safety began manufacturing, using, marketing, distributing,  
25 advertising, promoting, importing, offering for sale, and/or selling the Northern  
26 Safety AA Mini and AAA Mini Keychain 2 D-Cell flashlights subsequent to Mag  
27 Instrument's MINI MAGLITE® flashlight SSOA Trademark becoming distinctive  
28 and famous.



1           32. Northern Safety's commercial use in commerce of the MINI  
2 MAGLITE® flashlight SSOA Trademark in connection with flashlights has caused  
3 the dilution of the distinctive quality of the MINI MAGLITE® flashlight SSOA  
4 Trademark in violation of 15 U.S.C. §1125(c).

5           33. Northern Safety, its officers, directors, agents, servants, employees,  
6 attorneys, confederates, and all persons and/or entities acting for, with, by, through,  
7 and/or in concert and participation with them, or any of them, are hereby  
8 permanently enjoined from engaging in any of the following activities:

9           (a) manufacturing, using, marketing, distributing, advertising,  
10 promoting, importing, offering for sale, and/or selling any of the Northern Safety  
11 flashlights;

12           (b) manufacturing, using, importing, offering for sale, and/or selling  
13 any flashlight that infringes the '439 patent;

14           (c) inducing or enabling each other or others to manufacture, use,  
15 import, offer for sale, and/or sell any flashlight that infringes the '439 patent;

16           (d) manufacturing, using, marketing, distributing, advertising,  
17 promoting, importing, offering for sale, and/or selling any flashlight that infringes  
18 United States Trademark Registration No. 2,697,693, United States Trademark  
19 Registration No. 2,745,460, and/or United States Trademark Registration No.  
20 2,074,795;

21           (e) using Mag Instrument's D-Cell SSOA Trademark, C-Cell SSOA  
22 Trademark, MINI MAGLITE® flashlight SSOA Trademark, or any other mark,  
23 design, reproduction, copy, or symbol that is a colorable imitation thereof, or  
24 confusingly similar thereto, in connection with the manufacturing, use, marketing,  
25 distribution, advertisement, promotion, importation, offer for sale, and/or sale of  
26 flashlights or any goods or services not originating from or authorized by Mag  
27 Instrument;  
28

1 (f) using Mag Instrument's D-Cell SSOA Trademark, C-Cell SSOA  
2 Trademark, MINI MAGLITE® flashlight SSOA Trademark, or any other mark,  
3 design, reproduction, copy, or symbol that is a colorable imitation thereof, in any  
4 manner likely to cause confusion, to cause mistake, or to deceive the consuming  
5 public;

6 (g) representing in any manner, or by any method whatsoever, that  
7 goods, services, or other products provided by Northern Safety are sponsored,  
8 approved, authorized by, or originate from Mag Instrument or otherwise taking any  
9 action likely to cause confusion, mistake, or deception as to the origin, approval,  
10 sponsorship, or certification of such goods or services;

11 (h) committing any acts calculated or likely to cause consumers to  
12 believe that Northern Safety's products are Mag Instrument's products or are  
13 authorized Mag Instrument products unless they are such;

14 (i) infringing or diluting the distinctive quality of the D-Cell SSOA  
15 Trademark, the C-Cell SSOA Trademark, and/or the MINI MAGLITE® flashlight  
16 SSOA Trademark; and

17 (j) unfairly competing with Mag Instrument in any manner.

18 34. Service by mail upon Northern Safety, addressed to Anne M. Sterba,  
19 Rothwell, Figg, Ernst & Manbeck, P.C., 1425 K Street, N.W., Suite 800,  
20 Washington, D.C., 20005, of a copy of this Consent Judgment and Permanent  
21 Injunction entered by the Court is deemed sufficient notice under Federal Rule of  
22 Civil Procedure 65. It shall not be necessary for Northern Safety to sign any form  
23 of acknowledgement of service.

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